

Remarks

Claims 117, 119-122, 129-131, 135-137, 164-166, 170-172, 174-177, 181, 185, 188-195, 201-203, 205, 206, 209, 211, 212 and 214 are pending in the Application.

Claims 117, 119-122, 130 and 170 are rejected.

Claims 129, 131, 135-137, 164-166, 171, 172, 174-177, 181, 185, 188-195, 201-203, 205, 206, 209, 211, 212 and 214 are objected to.

Claim 185 is amended herein.

I. NONSTATUTORY DOUBLE PATENTING REJECTIONS

The Examiner has provisionally rejected Claims 117, 119-122, 130 and 170 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claim 98 of copending United States Patent Application Serial No. 10/033,076 (“the ‘076 Application”). Office Action, at 2. Applicant notes that the ‘076 Application has been allowed (including Claim 98), the issuance fee has been paid, but a patent has not yet issued from the ‘076 Application.

Applicant respectfully traverses this rejection. However, to facilitate prosecution of the Application, Applicant hereby responds with the enclosed Terminal Disclaimer to moot this obviousness-type double patenting provisional rejection. Applicant notes that, by filing this terminal disclaimer, it is not admitting the obviousness of the later filed claimed invention claimed in the ‘726 Application in light of the earlier filed disclosure of the present Application. *Quad Environmental*, 946 F.2d at 874, 20 U.S.P.Q.2d at 1394. Rather, “the filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither presumption nor estoppel on the merits of the rejection.” *Id.*, 946 F.2d at 874, 20 U.S.P.Q.2d at 1394-95. And, it is with that understanding Applicant has filed the terminal disclaimer. Therefore, this provisional obviousness-type double patenting rejection is now moot.

II. OBJECTED TO CLAIMS

The Examiner has objected to Claims 129, 131, 135-137, 164, 166, 171-172, 174-177, 181, 185, 188-195, 201-203, 205, 206, 209, 211, 212 and 214. Office Action, at 2.

Based upon the Office Action, Applicant understands that these claims were objected to because they were claims that depended from rejected claims.¹ In view of the terminal disclaimer filed with this application, the rejection of Claims 117, 119-122 and 170 are moot. So also, in view of the terminal disclaimer filed with this application, the rejection of all claims dependent upon Claims 117, 119-122 and 170, are now moot, as well.

Therefore, as a result of the foregoing, Applicant respectfully requests that the Examiner withdraw his objections to Claims 129, 131, 135-137, 164, 166, 171-172, 174-177, 181, 185, 188-195, 201-203, 205, 206, 209, 211, 212 and 214.

III. CLAIM AMENDMENT

Applicant has amended Claim 185 to remove the word “of,” which was inadvertently not removed when the claim was rewritten in independent form in the reply filed October 11, 2005.

IV. CONCLUSION

As a result of the foregoing, it is asserted by Applicant that the Claims in the Application are now in a condition for allowance, and respectfully requests allowance of such Claims.

Applicant respectfully requests that the Examiner call Applicant’s attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining problems.

¹ Note that objected to Claims 131, 136, 171, 185, 194, 201, and 203 were claims that were written in independent form in the reply filed October 11, 2005. Furthermore, with regard to the dependent claims objected to: Claims 135 and 214 depend from independent Claim 131, Claim 137 depends from independent Claim 136, Claims 172, 174-176, 184 and 188-193 depend from independent Claim 171, Claim 195 depends from independent Claim 194, Claim 202 depends from independent Claim 201, and Claims 205-206, 209, 211 and 212 depend from independent Claim 203. Applicant expects it was an unintentional oversight by the Examiner to object to these independent and dependent claims.


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Respectfully submitted,

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